

110 FERC ¶ 61,165
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 16, 2005

Docket No. ER05-360-000

Old Dominion Electric Cooperative
Attn: Mr. John A. Pirko, Esq.
Attorney for Old Dominion Electric Cooperative
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Dear Mr. Pirko:

1. On December 20, 2004, Old Dominion Electric Cooperative (Old Dominion) filed an application proposing changes to its Comprehensive Cost of Service Formula (Rate Formula). The proposed changes are: (1) to add a note to the Rate Formula to address the accounting for derivatives; (2) to add two new energy-related expense accounts to the Rate Formula; and (3) to clean-up and clarify terms and formatting. Old Dominion requests waiver of the sixty-day prior notice requirement to allow the proposed changes to be made effective January 1, 2004. We will accept and suspend Old Dominion's proposed Rate Formula changes, to become effective February 19, 2005, subject to refund and to the outcome of the proceedings in Docket Nos. EC05-1-000, ER05-18-000, and ER05-20-000, and ER05-309-000, as discussed below.

2. Notice of Old Dominion's December 20, 2004 filing was published in the *Federal Register*, 70 Fed. Reg. 804 (2005), with motions to intervene and protests due on or before January 10, 2005. On January 18, 2005, Bear Island Paper Company, L.P. (Bear Island) filed a motion to intervene out-of-time, protest, and request for hearing and audit. On January 18, 2005, Bear Island also filed an amended motion to consolidate Docket Nos. EC05-1-000, ER05-18-000, and ER05-20-000, and ER05-309-000 with Docket No. ER05-360-000. On February 2, 2005, Old Dominion filed an answer to Bear Island's protest and request for hearing and audit, as well as an answer to Bear Island's motion to consolidate.

3. Bear Island states that, as a retail customer of one of Old Dominion's member cooperatives, Rappahannock Electric Cooperative, acceptance of Old Dominion's proposed changes would, contrary to Old Dominion's assertion, increase rates retroactively to certain of its customers. Bear Island notes that it has challenged the

reclassification of accounts from demand- to energy-related in other pending dockets; namely, Docket Nos. EC05-1-000, ER05-18-000, and ER05-20-000, and ER05-309-000.

4. Bear Island contends that by allowing Old Dominion to treat costs in FERC Accounts 509 (Allowances) and 553 (Maintenance of Generating and Electric Equipment) as energy-related Old Dominion would overcharge Bear Island during 2004. Further, Bear Island states that, because Old Dominion has provided no 2004 test year data for the dollar amounts of such charges, it has not complied with 18 C.F.R. § 35.13(a)(2)(iii) (2004). Bear Island argues that the proposed retroactive charge is unjust and unreasonable and violates the Commission's prohibition against retroactive ratemaking. Bear Island requests that the Commission deny Old Dominion's request for waiver of the sixty-day prior notice requirement and find that any change in the Rate Formula must be made effective only on a prospective basis. Bear Island also requests a hearing and an audit, the former on the grounds that the proper characterization of demand and energy charges are material issues of disputed fact; the latter because, according to Bear Island, Old Dominion has conceded it violated its tariff during 2004 by billing these amounts as energy-related. Further, Bear Island requests consolidation of this proceeding with Docket Nos. EC05-1-000, ER05-18-000, and ER05-20-000, and ER05-309-000, in which Bear Island has raised similar issues.

5. Notwithstanding Old Dominion's opposition, we will grant Bear Island's motion to intervene out-of-time; given that Bear Island has an interest which may be directly affected by the outcome of this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Old Dominion's answer and will, therefore, reject it.

7. Our preliminary analysis finds that Old Dominion's proposal has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept and suspend Old Dominion's proposal, to become effective February 19, 2005, subject to refund and to the outcome of the proceedings in Docket Nos. EC05-1-000, ER05-18-000, and ER05-20-000, and ER05-309-000. In *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992), the Commission stated that, absent a strong showing of good cause, we will deny requests for waiver of prior notice for rate increases that do not implement a contract requirement, such as increases in requirements, coordination, and transmission rates. Old Dominion's proposal to modify the classification of certain accounts from demand to energy will result in some customers experiencing an increase in rates. Therefore, the Commission will deny Old

Dominion's request for waiver of the sixty-day prior notice requirement. Accordingly, Old Dominion's proposal will be made effective after sixty days from the date of filing, on February 19, 2005, subject to refund and to the outcome of the proceedings in Docket Nos. EC05-1-000, ER05-18-000, and ER05-20-000, and ER05-309-000. We also will deny Bear Island's request for a hearing and audit in this proceeding, since those matters are at issue in the other proceedings. Given that we have not yet acted in those other proceedings, consolidation at this time would be inappropriate.

8. Within 15 days of the date of this order, Old Dominion is directed to make a compliance filing to reflect the effective dates of the proposed changes consistent with the above discussion.

By direction of the Commission.

Magalie R. Salas,
Secretary.